

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

KRISTINA MIKHAYLOVA,

Plaintiff,

-against-

BLOOMINGDALE'S, INC., BLOOMINGDALE'S,  
INC. d/b/a BLOOMINGDALE'S AND FORTY  
CARROTS, BLOOMINGDALE'S, LLC,  
BLOOMINGDALE'S, LLC d/b/a  
BLOOMINGDALE'S NEW YORK, MACY'S,  
INC., MACY'S, INC. d/b/a MACY'S OF NEW  
YORK, UNITED STOREWORKERS RETAIL,  
WHOLESALE AND DEPARTMENT STORE  
UNION AFL-CIO LOCAL 3 a/k/a LOCAL 3  
UNITED STOREWORKERS RWDSU/UFCW,  
DENNIS DIAZ, individually, CHRISTOPHER  
CASTELLANI, individually, RICHARD LAW,  
individually, and BOBBY BOOKER, individually,

Defendants.

Civil Action No. 1:19-cv-08927-GDB

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-REPLY IN FURTHER  
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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Plaintiff, Kristina Mikhaylova (hereinafter “Plaintiff”) respectfully submits this motion seeking leave to file a sur-reply in response to Defendants’ Reply in support of Motion for Summary Judgment because Defendants improperly submit new facts and evidence with their Reply brief which was not raised in their initial motion, is controverted by evidentiary materials in the record and lack foundation.

“Motions for leave to file sur-reply information [ ] are subject to the sound discretion of the court.” Anghel v. New York State Dep't of Health, 947 F. Supp. 2d 284, 293 (E.D.N.Y. 2013), *aff'd*, 589 F. App'x 28 (2d Cir. 2015) (quoting De Pedrero v. Schweizer Aircraft Corp., 635 F.Supp.2d 251, 258 (W.D.N.Y.2009). “Courts have consistently recognized that a district court may rely on new arguments raised in the reply brief if the non-movant is provided an opportunity to respond to them.” Brown v. Genworth Life & Annuity Ins. Co., No. 3:18-CV-506, 2020 WL 4340539, at \*3 (E.D. Tenn. July 28, 2020).

Here, Defendants submit the previously undisclosed Declaration of Juana-Lippman and Supplemental Declaration of Courtney Cox. This is the first time Defendants identify Juana-Marie Lippman and/or the Leave of Absence Office located in Tampa, Florida that allegedly processed Plaintiff’s leave of absence paperwork. Defendants did not identify Juana-Marie Lippman and/or the aforementioned information during discovery, in their initial disclosures, nor while the case was pending in the Equal Employment Opportunity Commission in 2019. Notably, Defendants previously submitted a single vague statement in their Memorandum of Law in Support of Motion for Summary Judgment that the leave of absence team was located in a central location. (Dkt No. 106 at p. 20; Dkt No.105, ¶15).

Accordingly, Plaintiff seeks an opportunity to respond to Defendants’ newly submitted facts and evidence to support their arguments which she was not afforded in her opposition “so as to

permit comprehensive adjudication of the issues raised.” Correspondent Servs. Corp. v. First Equities Corp. of Fla., 442 F.3d 767 (2d Cir. 2006). The filing of this Surreply will not prejudice Defendants. However, Plaintiff would be prejudiced if she was denied the opportunity to respond. The filing of a short Surreply will not delay this matter.

Dated: October 5, 2023  
New York, New York

**DEREK SMITH LAW GROUP, PLLC**  
*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

I hereby certify that that on October 5, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Melissa Mendoza  
Melissa Mendoza